

(b)(6)



U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
U.S. Citizenship
and Immigration
Services

DATE: JUN 11 2013

OFFICE: TEXAS SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner:
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will sustain the appeal and approve the petition.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a drilling engineer and well control instructor for Chevron Corporation, Houston, Texas. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel, copies of materials already in the record, and background materials regarding the explosion on the Deepwater Horizon offshore drilling platform.

Section 203(b) of the Act states, in pertinent part:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability.—

(A) In General. — Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer —

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by

increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990, published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

In re New York State Dept. of Transportation (NYSDOT), 22 I&N Dec. 215 (Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on March 21, 2012. Counsel stated:

[The petitioner] is an outstanding expert with 7 years of experience and solid background in the field of petroleum and drilling, especially in well control engineering, and drilling and completion engineering. He has demonstrated outstanding expertise in petroleum engineering, with significant research and professional practice in well control instruction. He has made exceptional scientific

accomplishments [in the] gas industry that are reputed and influential throughout different projects in South America, the US, Asia and Europe. . . .

One of the biggest challenges oil and gas companies face is drilling and completing wells in a safe and controlled manner. . . . The past accident in the Gulf of Mexico is [a] prime example of the need [for] proper well control. . . .

[The petitioner] has been well recognized for his excellent performance and influential contributions as [a] well control instructor for [REDACTED] business units worldwide. . . . [The petitioner's] selection as a trainer of so many experienced individuals and as a reviewer of their training materials is an indication of his high standing in the field.

As a further indication of his esteemed stature in the field, [the petitioner] was nominated as one of eleven [REDACTED] accreditation review panel member[s] for the [REDACTED] review panel is a group of subject matter experts and well control trainers comprised of operators, drilling contractors, and university faculty. Members of the Review Panel are nominated by the [REDACTED]

The petitioner submitted a one-page printout regarding the [REDACTED]. The document lists 11 names, comprising two "Producer Representatives," two "Contractor Representatives," three "Alternate Panel Members" (including the petitioner), and four names under [REDACTED]. There is also an empty space under the phrase "University Representative," suggesting that the position was vacant. An accompanying document from the [REDACTED] stated:

[REDACTED] . . . accredits programs in the field of well control training for the oil and gas exploration & production industry. . . .

The Panel membership is nominated by the [REDACTED] and approved by the [REDACTED] Executive Committee. . . . The Panel consists of not fewer than five members appointed for staggered three-year terms.

Counsel listed some of the petitioner's projects (detailed below), and asserted that the petitioner "has a unique series of accomplishments and experiences to his credit," through which "the benefits and influence of [the petitioner's] work are already quite significant, concrete and widespread."

The intrinsic merit of the petitioner's occupation is not in dispute. With respect to national scope, counsel stated:

[The] petroleum industry plays a significant role in the national economy and [the petitioner] plays a critical role in ensuring a sustainable supply of oil and gas

production in the United States. . . . Moreover, as a recognized expert in well control, the dissemination of his work benefits other engineers and practitioners throughout the United States and worldwide.

For the third prong of the *NYSDOT* national interest test, counsel quoted five witness letters submitted with the initial filing of the petition. The evidence list submitted with the petition incorrectly refers to a letter from Professor [REDACTED] Venezuela, as an “Independent Recommendation.” Elsewhere, however, counsel acknowledged that Prof. [REDACTED] was the petitioner’s “master degree advisor” at that university. Prof. [REDACTED] stated:

[The petitioner] is a recognized professional in the area of Petroleum Engineering; he has made widely recognized engineering contributions in research, improvement of procedures, and in training drilling and completions personnel all around the world.

I was [the petitioner’s] project assessor on two of his investigations. His research

describes the design of a drilling fluids system in the ongoing drilling campaign at Boscan field, as well as new proposals to optimize these systems and achieve . . . better performance in drilling and completion operations. . . . His finding and recommendation are being used today, including a 3% lubricant concentration to prevent shale instability in the intermediate hole section. His research “Feasibility Of The Application Of A Dual ESP System.”

[REDACTED] proposed the use of an electric submersible backup pump (install[ed] with a Y-tool) which can be activated when the main pump fails. . . . The system is currently used in different fields and the Y-tool is also used to access the well for logging operations.

[REDACTED] senior completions engineer at [REDACTED] was formerly the petitioner’s immediate supervisor at that company. He described the petitioner’s work in technical detail and asserted that the petitioner “is a leading drilling expert in the petroleum-engineering field.”

The remaining three witnesses have all worked with the petitioner during his time at [REDACTED] drilling and completion well control team leader, stated:

[M]y team has delivered [REDACTED] training to more than [REDACTED] Drilling & Completion personnel on a global basis. . . .

[The petitioner] has made important contributions to the oil and gas industry during his years at [REDACTED] which have been of great significance to the national interest of the United States. His work and field applications related to drilling and completion engineering practices provide others in the field with the opportunity to develop cutting-edge technology for ensuring safe, environmentally friendly and reliable oil and gas well operations. [The petitioner] has been recognized

at the highest levels for his research, implementation, and successful operations on some of the most important overseas projects. In 2009, he was recognized for his outstanding work that led to substantial cost reduction and safety performance for one of the most important exploration projects in Venezuela. . . .

[The petitioner] has been recognized for his excellent performance and influential contributions in our field. Some of his accomplish includes [sic]:

1. Worked as an internal consultant in well control engineering and as a related SME (Subject Matter Expert) for [REDACTED] business units worldwide. This includes well control procedures review and evaluation for HPHT (high pressure – high temperature) exploration well in [REDACTED] [sic], Argentina and flare pit guidelines and recommendations in [REDACTED] Colombia.
2. Provided contractor well control competency assessment at rig site of critical personnel for [REDACTED] exploration well in Poland. . . .
3. Selected to [REDACTED] review panel. . . .

[The petitioner] has taught well control at the highest standard to more than 300 people in both domestic and international locations.

Mr. [REDACTED] listed some of the petitioner's specific contributions, such as "working with the team in the development of a new well control simulation application that will be available for [REDACTED] workforce."

[REDACTED] stated:

[The petitioner] is certainly one of the most prestigious professionals within the global drilling and completion community. He is recognized by his valuable contributions to the design and operation of oil and gas wells. [The petitioner's] outstanding engineering skills, experience, and willingness to develop and implement new technologies are vital keys to recovering strategic oil and gas reserves of several marginal fields overseas. . . . In my view . . . , [the petitioner] outperforms most other professionals and peers in this field, as many of his scientific achievements could not have been accomplished by others. . . .

In the [REDACTED] field major capital project, [the petitioner] was part of a team that developed the concept of high deviated and horizontal wells for recovering extra-heavy oil reserves from pay formations in order to reduce environmental impact and project cost. . . . This concept of drilling horizontal wells (by using trajectory software) has since been used in [REDACTED] overseas projects and is still currently being used in the [REDACTED] fields.

He also worked together with [REDACTED] engineers to develop a procedure . . . that is now used [by] [REDACTED] worldwide to cut water in production oil sands. . . .

In some of the wells, the average water cut before treatment was 90%. After treatment, the wells had an average water cut of ~ 30% and an average oil net production gain of 314% per well.

In one well, two previous water control treatments using the conventional method (suicide squeeze) had previously performed unsuccessfully, leaving the well producing 100% water after treatment. The new treatment reversed this lack of success with a water reduction from 100% to 30% and a net production gain of 365%. After the successful isolation of the water zone, this innovative solution was established as a . . . standard procedure for shutting water off in oil wells for [REDACTED]

[The petitioner] also developed a detailed procedure to perform sand clean out jobs for [REDACTED] field wells that is still being use [sic] by [REDACTED] on Drilling & Completions operations. . . . No standard procedure was available prior to [the petitioner's] proposal.

[REDACTED] now "a contract Drilling Superintendent for an independent oil company in [REDACTED]" previously worked as "a consultant Drill Site Manager for [REDACTED] in land operations in field in [REDACTED] and in an offshore exploration project in the [REDACTED]

Mr. [REDACTED] stated: "Through my many years of experience in this field, I can confidently say that [the petitioner] is one of the best drilling engineers I have ever met, and can be counted on to deliver technically rigorous, high-quality well designs." Mr. [REDACTED] provided technical details about the petitioner's work on various projects, and asserted that the petitioner single-handedly took on duties normally assigned to "between two and three more engineers." With regard to the [REDACTED] field project, Mr. [REDACTED] stated: "Lessons learned and best practices are currently being used onshore and offshore Colombia."

The petitioner submitted translated abstracts of research papers he wrote as a graduate student and presentations he gave at [REDACTED]. The record also indicates that the petitioner served as a "Technical Advisor" on two research projects undertaken by students at the [REDACTED] in 2010 and 2011. A "Recognition of Achievement" certificate from [REDACTED] acknowledged the petitioner's "outstanding commitment, performance and contribution to [REDACTED] to achieve an Incident Free, Full Compliance and Zero Standby Time Operation."

On May 17, 2012, the director issued a request for evidence, instructing the petitioner to submit additional evidence to meet the standards set forth in NYSDOT. The director stated that the petitioner's initial evidence failed to "indicate to what extent, if any, that [the petitioner] influenced the field of Oil Field and Drilling [sic] to a greater degree than others in the field."

In response, the petitioner submitted additional background information about [REDACTED] establishing their international authority within the petroleum industry. The petitioner also submitted two new witness letters. [REDACTED] a member of the [REDACTED] stated:

As a recognized subject matter expert in the area of [REDACTED] who has positively influenced the field of [REDACTED] and petroleum industry, [the petitioner] was selected by [REDACTED] as a review panel member of [REDACTED]

The [REDACTED] exclusively represents the worldwide oil and gas drilling industry, to advance drilling and completion technology, improve health, safety, environmental and training practices, and champion sensible regulations and legislation which facilitate safe and efficient drilling. . . .

[The petitioner] underwent a rigorous qualification review by the [REDACTED] He was finally selected as a panel member of [REDACTED] because he is an expert in well control. . . . The committee also considered [the petitioner's] position as a lead field drilling engineer in multiple well control operations for different business units . . . , and his unique expertise in inspecting and testing oil/gas blowout preventer systems.

[REDACTED] general director of [REDACTED], stated:

I met [the petitioner] when he joined the Society of Petroleum Engineers. . . . Further, I came to know about his work through reading one of his technical investigation projects on the use of Drilling Fluids in oil recovery . . . which demonstrates his unique and excellent skills as a gifted researcher in the Drilling Engineering field. Particularly, his expertise and skills have led to improvements in the drilling fluid systems used in recovering oil in the [REDACTED] field in [REDACTED]

Describing the petitioner's [REDACTED] field work in technical detail, Mr. [REDACTED] stated that the petitioner's "work has an extremely important impact on the fiscal savings of the field as a whole, with saving estimations in the area of hundreds of millions of dollars." Mr. [REDACTED] asserted that the petitioner's "significant achievements and extensive expertise in petroleum makes him a leading figure and driving force in this field."

The director denied the petition on December 29, 2012, stating that the petitioner had not established that "the impact of a single Petroleum Engineer" yields benefits that are national in scope, or that the petitioner has had sufficient influence on the field to qualify for the waiver.

On appeal, counsel asserts that the director "fails to consider the weight of the Beneficiary's tremendous work and achievements in well control and drilling safety." Background materials

regarding the Deepwater Horizon explosion and oil spill demonstrate that well safety is not a strictly local issue.

The director appears to have considered the petitioner's position as being responsible for a single well or oil field, whereas the record shows that the petitioner has broader responsibilities, lending national scope to his work. Counsel correctly states that the petitioner has served the industry on a national level, including his service as a [REDACTED] alternate member. The petitioner's appointment to this small but powerful body appears to be a strong vote of confidence from the highest levels of his specialty. The petitioner is not merely an instructor; he is involved with developing and accrediting instructional materials used by many companies within the industry. In this way, the petitioner's impact and influence extend beyond his local workplace.

Counsel also quotes from previously submitted witness letters. While such letters cannot, entirely by themselves, suffice to establish eligibility, in this instance they serve to clarify and explain information found elsewhere in the record, thereby serving in a valuable advisory capacity rather than as primary evidence of eligibility. The petitioner's achievements as documented in the record and further explained by witnesses establish that the petitioner is not merely a well-qualified engineer, but has made valuable and influential contributions to his field. The petitioner has shown, by a preponderance of evidence, that the benefit of retaining his services outweighs the national interest that is inherent in the labor certification process. On the basis of the evidence submitted, the petitioner has established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

ORDER: The appeal is sustained and the petition is approved.